G/2166

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● CLASS ACTIONS ● INTELLECTUAL PROPERTY ● ENVIRONMENTAL

February 8, 2002

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Hyung Sough
Commissioner of Patent and Trademarks
Washington, D.C. 20231

RE: In re Application of: **Messner, Marc A.**)
    Filed: 08/13/2001) GAU: 2166
    Serial No.: 09/927,292)
    For: Apparatus And Method For Performing)
    Secure Network Transactions)

Dear Mr. Sough:

This letter follows on our telephone conversation of February 7, 2002. I appreciate your estimate that there will be approximately one year before the examination of this application begins. However, I wanted to apprize you of the status of this application following on its predecessor. Mr. Joe Parisi was our examiner in the parent application. He mailed a final rejection of the parent application on 06/19/2001. Following receipt of that final rejection, I called him to discuss the application. I asked him why he had rejected our arguments, and we discussed those issues. We decided at the end of our conversation that some of the claims in the application would probably have been allowable had we amended our claims to refer to a "personal electronic apparatus" rather than simply a "electronic apparatus." Mr. Parisi, while he said that he could not give me a definitive answer, stated that he would certainly have leaned towards allowing the claims if that amendment had been made.

Subsequently, I filed this CIP with the amendments I discussed with Mr. Parisi. It was my understanding from our conversation that he was going to be leaning towards allowing those claims. I know that Mr. Parisi has left the office, but you may still be able to contact him to verify our discussions, or he may have made notes in the file. Hopefully, this can expedite your examination of the pending application. I look forward to speaking with you once you begin processing the application.

Respectfully submitted,

Edward L. White
Registration No.: 41,375

ELW:jri

cc: Marc A. Messner

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

WRITTEN OPINION

(PCT Rule 66)

To: MICHAEL J. MALLIE
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
12400 WILSHIRE BOULEVARD
7TH FLOOR
LOS ANGELES, CALIFORNIA 90025

Date of Mailing *(day/month/year)*	1 22 02

Applicant's or agent's file reference	REPLY DUE
04004.P004ZPCT	within **TWO** months from the above date of mailing

International application No.	International filing date *(day/month/year)*	Priority date *(day/month/year)*
PCT/US00/04814	22 FEBRUARY 2000	24 FEBRUARY 1999

International Patent Classification (IPC) or both national classification and IPC
IPC(7): G06F 17/60 and US Cl.: 705/37

Applicant
MEDPOOL.COM, INC.

1. This written opinion is the ___first_____ (first, etc.) drawn by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

I	[X]	Basis of the opinion
II	[ ]	Priority
III	[ ]	Non-establishment of opinion with regard to novelty, inventive step or industrial applicability
IV	[X]	Lack of unity of invention
V	[X]	Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
VI	[ ]	Certain documents cited
VII	[ ]	Certain defects in the international application
VIII	[ ]	Certain observations on the international application

3. The applicant is hereby invited to reply to this opinion.

When?   See the time limit indicated above. ~~The applicant may, before the expiration of that time limit, request this Authority to grant an extension.; see Rule 66.2(d).~~

How?   By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also   For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 *bis*.
For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: _24 JUNE 2001_____

Name and mailing address of the IPEA/US	Authorized officer
Commissioner of Patents and Trademarks Box PCT Washington, D.C. 20231	FOREST THOMPSON
Facsimile No. (703) 305-3230	Telephone No. (703) 306-5449

Form PCT/IPEA/408 (cover sheet) (July 1998)*

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To: MICHAEL J. MALLIE
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
12400 WILSHIRE BOULEVARD
7TH FLOOR
LOS ANGELES, CALIFORNIA 90025

PCT

WRITTEN OPINION

(PCT Rule 66)

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04004.P004ZPCT	within **TWO** months from the above date of mailing

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   V   [X]   Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

   VI   [ ]   Certain documents cited

   VII   [ ]   Certain defects in the international application

   VIII   [ ]   Certain observations on the international application

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   For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 *bis*.
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Facsimile No. (703) 305-3230	Telephone No. (703) 306-5449

Form PCT/IPEA/408 (cover sheet) (July 1998)★

WRITTEN OPINION

I. Basis of the opinion

1. With regard to the elements of the international application:*

☐ the international application as originally filed

☒ the description:

pages ___NONE___ . as originally filed

pages ___1-65___ . filed with the demand

pages ___NONE___ . filed with the letter of _____

☒ the claims:

pages ___NONE___ . as originally filed

pages ___NONE___ . as amended (together with any statement) under Article 19

pages ___66-89___ . filed with the demand

pages ___NONE___ . filed with the letter of _____

☒ the drawings:

pages ___1-47___ . as originally filed

pages ___NONE___ . filed with the demand

pages ___NONE___ . filed with the letter of _____

☒ the sequence listing part of the description:

pages ___NONE___ . as originally filed

pages ___NONE___ . filed with the demand

pages ___NONE___ . filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item. These elements were available or furnished to this Authority in the following language _____ which is:

☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).

☐ the language of publication of the international application (under Rule 48.3(b)).

☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

☐ contained in the international application in printed form.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority in written form.

☐ furnished subsequently to this Authority in computer readable form.

☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.

☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☒ The amendments have resulted in the cancellation of:

☒ the description, pages___NONE___

☒ the claims, Nos. ___127-129___

☒ the drawings, sheets/fig ___NONE___

5. ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed".

IV.   Lack of unity of invention

1.   In response to the invitation (Form PCT/IPEA/405) to restrict or pay additional fees the applicant has:

☐   restricted the claims.

☒   paid additional fees.

☐   paid additional fees under protest.

☐   neither restricted nor paid additional fees.

2.   This Authority found that the requirement of unity of invention is not complied with for the following reasons and chose, according to Rule 68.1 not to invite the applicant to restrict or pay additional fees:

This application contains the following inventions or groups of inventions which are not so linked as to form a single inventive concept under PCT Rule 13.1. In order for all inventions to be examined, the appropriate additional examination fees must be paid.

Group I, claim(s)1–44, drawn to purchase request aggregation into vendor pools.

Group II, claim(s) 45–70, drawn to vendors bidding for one or more vendor pools.

Group III, claim(s) 71–89 and 113–126, drawn to selecting a vendor bid based on buyer interest and buyer preference criteria.

Group IV, claim(s) 90–112, drawn to receiving buyer purchase interests from more than one buyer for one or more different items, accepting vendor bids from multiple vendors for one or more different items, and matching the vendor bids to the buyer purchase interests.

3.   Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this opinion:

☒   all parts.

☐   the parts relating to claims Nos. _.

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. statement

Novelty (N)	Claims	4-6, 8-126	YES
	Claims	1,2,3,7	NO
Inventive Step (IS)	Claims	NONE	YES
	Claims	1-126	NO
Industrial Applicability (IA)	Claims	1-126	YES
	Claims	NONE	NO

2. citations and explanations

1. Claims 1-3 and 7 lack novelty under PCT Article 33(2) as being anticipated by Walker et al (U.S. Patent no. 5,794,207).

Claim 1: **Walker et al.** discloses:
- receiving a purchase request from each of a plurality of buyers (col. 8 lines 28-65);
- aggregating the purchase requests to form a combined quote request (col. 17 line 48 - col. 18 line 33); and
- transmitting the combined quote request to one or more vendors (col. 17 line 48 - col. 18 line 33).

Claim 2: **Walker et al.** discloses posting a future trade notification to the plurality of buyers, the future trade notification providing information each buyer uses to submit the purchase request (col. 15 line 60 - col. 16 line 11).

Claim 3: **Walker et al.** discloses receiving a bid from each of the one or more vendors in response to the combined quote request (col. 8 lines 28-67; col. 15 lines 45-59; col. 19 lines 13-28).

Claim 7: **Walker et al.** discloses wherein the traded product comprises of a product type and one or more specific products within the product type (col. 16 lines 3-45; col. 31 line 10 - col. 32 line 31).

2. Claims 4-6 & 8-10 lack an inventive step under PCT Article 33(3) as being obvious over the prior art as applied in the immediately preceding paragraph and further in view of Fisher et al. (U.S. Patent no. 5,835,896).

Claim 4. **Walker et al.** does not disclose wherein at an expiration of a predetermined vendor bidding time the trade is closed; nor wherein the vendor having a lowest bid price is selected to supply the purchase requests. **Walker et al.** does disclose CPO database 265 tracks all CPOs 100 with fields such as status, tracking number, date, time, subject, price, expiration date, conditions, and buyer identification number. However, **(Continued on Supplemental Sheet.)**

Supplemental Box
(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: Boxes I - VIII   **Sheet 10**

TIME LIMIT:

The time limit set for response to a Written Opinion may not be extended. 37 CFR 1.484(d). Any response received after the expiration of the time limit set in the Written Opinion will not be considered in preparing the International Preliminary Examination Report.

V. 2. REASONED STATEMENTS - CITATIONS AND EXPLANATIONS (Continued):
Fisher et al. discloses:
- wherein at an expiration of a predetermined vendor bidding time the trade is closed (col. 13 line 55 - col. 14 line 11), and
- wherein the vendor having a lowest bid price is selected to supply the purchase requests (col. 13 line 55 - col. 14 line 11).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Walker et al.** to disclose wherein at an expiration of a predetermined vendor bidding time the trade is closed; and wherein the vendor having a lowest bid price is selected to supply the purchase requests, as disclosed by **Fisher et al.**, because this provides a defined closing time for the buyers' offers and vendors' bids.

Claim 5: **Walker et al.** does not specifically disclose wherein said purchase requests are associated with a trade, wherein each purchase request comprises of a traded product a request quantity of the traded product, and a maximum price at which the buyer is committed to purchase the request quantity of the traded product. However, **Fisher et al.** discloses:
- wherein said purchase requests are associated with a trade (Abstract),
- wherein each purchase request comprises of a traded product:
  -- a request quantity of the traded product (Abstract; col. 13 line 55 - col. 14 line 11), and
  -- a maximum price at which the buyer is committed to purchase the request quantity of the traded product (Abstract; col. 13 line 55 - col. 14 line 11).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Walker et al.** to disclose wherein said purchase requests are associated with a trade, wherein each purchase request comprises of a traded product a request quantity of the traded product, and a maximum price at which the buyer is committed to purchase the request quantity of the traded product, as disclosed by **Fisher et al.**, because this promotes more business (i.e., profitability) for the system and is consistent with the invention of **Walker et al.**

Claim 6: **Walker et al.** discloses:
- wherein the buyers remain anonymous to the vendors during the trade (col. 7 lines 52-59),
- wherein the maximum price committed by each buyer is unknown to the vendors during the trade (col. 32 lines 3-15), and
- wherein a vendor is selected to supply the buyer's purchase request only if the vendor can provide a bid price at or below the buyer's maximum price (col. 32 lines 3-15).

Claim 8: **Walker et al.** discloses each purchase request is associated with a buyer characteristic (col. 8 lines 42-65). **Walker et al.** does not specifically disclose said receiving includes receiving a list of acceptable vendors from each buyer. However, it was old and well known in the art at the time the invention was made that buyers may have preferences for whom they wish to conduct business with, and a list of acceptable vendors could be supplied by a buyer. A system that accommodates buyer preferences may be more attractive to buyers as their personal preferences are being catered to and may achieve more sales than ones that don't. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Walker et al.** to disclose said receiving includes receiving a list of acceptable vendors from each buyer, as disclosed in old and well known art, because buyers often desire to choose their vendor/supplier because of location, past experience or notoriety.

Claim 9: **Walker et al.** discloses wherein the buyer characteristic comprises one of time of delivery, location of delivery, payment terms, and a financial rating (col. 31 line 10 - col. 32 line 31).

Claim 10: **Walker et al.** does not specifically disclose wherein said aggregating the purchase requests is done after a predetermined buyer pooling time has expired, the predetermined buyer pooling time is the time during which the buyers can submit the purchase requests. However, **Fisher et al.** discloses wherein said aggregating the purchase requests is done after a predetermined buyer pooling time has expired, the predetermined buyer pooling time is the time during which the buyers can submit the purchase requests (col. 13 line 55 - col. 14 line 11). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Walker et al.** to disclose wherein said aggregating the purchase requests is

Form PCT/IPEA/408 (Supplemental Box) (July 1998)*

Supplemental Box
(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: Boxes I - VIII   **Sheet 11**

done after a predetermined buyer pooling time has expired, the predetermined buyer pooling time is the time during which the buyers can submit the purchase requests, as disclosed by **Fisher et al.**, because this provides information and incentive to buyers to submit purchase requests in a timely manner.

3. Claims 11-18, 24, 33, 39-44 lack an inventive step under PCT Article 33(3) as being obvious over the prior art as applied in the immediately preceding paragraph and further in view of **Lupien et al.** (U.S. Patent No. 5,845,266).

Claim 11:   Neither **Walker et al.** nor **Fisher et al.** specifically disclose wherein a vendor pool is formed for each vendor from the combined request for quote, nor wherein each vendor pool is the aggregate of the quantities in the purchase requests that identify a product supplied by that vendor. However, **Lupien et al.** discloses a computerized crossing network that allows traders to input as orders a satisfaction density profile and maximum size limit which at once characterizes the trader's degree of satisfaction to trade at any and all prices and sizes, up to the aggregate (or size) limit, and that matches orders (as represented by each trader's satisfaction density profile) so that each trader is assured that the overall outcome of the process (in terms of average price and size of fill) has maximized the mutual satisfaction of all traders (col. 3 line 62 - col. 4 line 4), which discloses the functionality of a vendor pool. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Walker et al.** and **Fisher et al.** to disclose a vendor pool is formed for each vendor from the combined request for quote, and wherein each vendor pool is the aggregate of the quantities in the purchase requests that identify a product supplied by that vendor, as disclosed by **Lupien et al.**, because this promotes increased sales by vendors and purchases by buyers through increased seller and buyer satisfaction.

Claim 12:   Neither **Walker et al.** nor **Fisher et al.** does not specifically disclose wherein the combined request for quote is associated with a characteristic having a plurality of mutually exclusive states, nor each of said purchase request being associated with one of said plurality of mutually exclusive states such that certain purchase requests are associated with the same state, each vendor pool is separated into one or more subpools based on said characteristic such that each of said subpools is the aggregate of the purchase requests having the same state. However, **Lupien et al.** discloses:
-        wherein the combined request for quote is associated with a characteristic having a plurality of mutually exclusive states (col. 3 line 60 - col. 4 line 46), and
-        each of said purchase request being associated with one of said plurality of mutually exclusive states such that certain purchase requests are associated with the same state, each vendor pool is separated into one or more subpools based on said characteristic such that each of said subpools is the aggregate of the purchase requests having the same state (col. 3 line 60 - col. 4 line 46).
        Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of **Walker et al.** and **Fisher et al.** to disclose the combined request for quote is associated with a characteristic having a plurality of mutually exclusive states, and each of said purchase request being associated with one of said plurality of mutually exclusive states such that certain purchase requests are associated with the same state, each vendor pool is separated into one or more subpools based on said characteristic such that each of said subpools is the aggregate of the purchase requests having the same state, as disclosed by **Lupien et al.**, because this provides an obvious incentive to buyers and sellers that promotes increased sales that meet buyers and sellers objectives of price and quantities and prices.

Claim 13, 43:   Neither **Walker et al.** nor **Fisher et al.** does not specifically disclose said combined request for quote is associated with a set of characteristics each having a plurality of mutually exclusive states, nor each of said purchase requests being associated with one of said states for each of said set of characteristics; for each characteristic in said set of characteristics, separating each vendor pool into one or more subpools based on said characteristic such that each subpool of that vendor pool is the aggregate of the purchase requests in that vendor pool having the same state for said characteristic; nor transmitting said subpools to said respective vendors. However, **Lupien et al.** discloses:
-        said combined request for quote is associated with a set of characteristics each having a plurality of mutually exclusive states, each of said purchase requests being associated with one of said states for each of said set of characteristics (col. 3 line 60 - col. 4 line 46);
        each of said purchase requests being associated with one of said states for each of said set of characteristics; for each characteristic in said set of characteristics, separating each vendor pool into one or more subpools based on said characteristic such that each subpool of that vendor pool is the aggregate of the purchase requests in that vendor pool having the same state for said characteristic (col. 3 line 60 - col. 4 line 46); and
        transmitting said subpools to said respective vendors (col. 4 lines 25-28), as disclosed through the functionality of once the satisfaction density profile is complete, the trader causes the satisfaction density profile to be transmitted to a central matching controller ("CMC"), which anonymously matches buy and sell orders as discussed below.
        Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of **Walker et al.** and **Fisher et al.** to disclose said combined request for quote is associated with a set of

Supplemental Box
(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: Boxes I - VIII

characteristics each having a plurality of mutually exclusive states, nor each of said purchase requests being associated with one of said states for each of said set of characteristics; for each characteristic in said set of characteristics, separating each vendor pool into one or more subpools based on said characteristic such that each subpool of that vendor pool is the aggregate of the purchase requests in that vendor pool having the same state for said characteristic; nor transmitting said subpools to said respective vendors, as disclosed by Lupien et al., because this provides an obvious incentive to buyers and sellers that promotes increased sales that meet buyers and sellers objectives of price and quantities and prices.

Claim 14, 44.   Walker et al. discloses
-          receiving from a first of said vendors an indication that a first of said plurality of mutually exclusive states for a first of said set of characteristics is unacceptable (col. 9 lines 45-51); and
-          removing from the vendor pool of the first vendor all of said purchase requests that are associated with said first state of said first characteristic (col. 9 lines 45-51), through the functionality that a seller is given the option to respond to a CPO by issuing a binding counteroffer with conditions different from the original CPO. The seller transmits the counteroffer to the central controller which then forwards the counteroffer to the buyer. The buyer is then given the option of accepting the counteroffer and thereby binding the seller to a contract.

Claim 15:   Walker et al. discloses said plurality of mutually exclusive states of said first characteristic are different times for delivery (col. 20 lines 31-48).

Claim 16:   Walker et al. discloses said plurality of mutually exclusive states of said first characteristic are different locations for delivery (col. 20 lines 31-48).

Claim 17:   Walker et al. discloses said plurality of mutually exclusive states of said first characteristic are different payment terms (col. 20 lines 50-67).

Claim 18:   Walker et al. discloses said plurality of mutually exclusive states of said first characteristic are different financial ratings (col. 18 lines 50-55), through the functionality of maintaining and verifying the validity of the buyer's credit card.

Claims 24, 40:   Neither Walker et al. nor Lupien et al. specifically disclose wherein said purchase requests are associated with a trade, wherein each purchase request comprises of a traded product a request quantity of the traded product, and a maximum price at which the buyer is committed to purchase the request quantity of the traded product. However, Fisher et al. discloses:
-          wherein said purchase requests are associated with a trade (Abstract),
-          wherein each purchase request comprises of a traded product:
--   a request quantity of the traded product (Abstract; col. 13 line 55 - col. 14 line 11), and
--   a maximum price at which the buyer is committed to purchase the request quantity of the traded product (Abstract; col. 13 line 55 - col. 14 line 11).
Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify Walker et al. to disclose wherein said purchase requests are associated with a trade, wherein each purchase request comprises of a traded product a request quantity of the traded product, and a maximum price at which the buyer is committed to purchase the request quantity of the traded product, as disclosed by Fisher et al., because this promotes more business (i.e., profitability) for the system and is consistent with the invention of Walker et al.

Claim 29:   Walker et al. does not specifically disclose said combined request for quote is associated with a set of characteristics each having a plurality of mutually exclusive states, nor each of said purchase requests being associated with one of said states for each of said set of characteristics; for each characteristic in said set of characteristics, separating each vendor pool into one or more subpools based on said characteristic such that each subpool of that vendor pool is the aggregate of the purchase requests in that vendor pool having the same state for said characteristic; nor transmitting said subpools to said respective vendors. However, Lupien et al. discloses:
-          said combined request for quote is associated with a set of characteristics each having a plurality of mutually exclusive states, each of said purchase requests being associated with one of said states for each of said set of characteristics (col. 3 line 60 - col. 4 line 46);
          each of said purchase requests being associated with one of said states for each of said set of characteristics; for each characteristic in said set of characteristics, separating each vendor pool into one or more subpools based on said characteristic such that each subpool of that vendor pool is the aggregate of the purchase requests in that vendor pool having the same state for said characteristic (col. 3 line 60 - col. 4 line 46); and
          transmitting said subpools to said respective vendors (col. 4 lines 25-28), as disclosed through the functionality of

Supplemental Box
(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: Boxes I - VIII   Sheet 13

once the satisfaction density profile is complete, the trader causes the satisfaction density profile to be transmitted to a central matching controller ("CMC"), which anonymously matches buy and sell orders as discussed below.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Walker et al.** to disclose said combined request for quote is associated with a set of characteristics each having a plurality of mutually exclusive states, nor each of said purchase requests being associated with one of said states for each of said set of characteristics; for each characteristic in said set of characteristics, separating each vendor pool into one or more subpools based on said characteristic such that each subpool of that vendor pool is the aggregate of the purchase requests in that vendor pool having the same state for said characteristic; nor transmitting said subpools to said respective vendors, as disclosed by **Lupien et al.**, because this provides an obvious incentive to buyers and sellers that promotes increased sales that meet buyers and sellers objectives of price and quantities and prices.

Claim 32, 35-36, 38:   Neither **Walker et al.** nor **Lupien et al.** specifically disclose during a first time period, during which the vendors can submit bids for their vendor pool, performing the following: allowing those of said plurality of buyers, who did not identify all of said plurality of vendors as being acceptable, to identity others of said plurality of vendors as being acceptable, updating the vendor pools accordingly, and transmitting any updates to the vendor pools to their respective vendors; wherein said first time period is divided into predetermined separate time periods during which the bids can be submitted by the vendors; wherein said attempts to match are performed in-between said separate time periods; different ones of said request for quotes identify different ones of said plurality of vendors as being acceptable to supply that buyer; and wherein at least one of said plurality of vendors is identified by more than one of said request for quotes. It was old and well known in the art at the time the invention was made that vendors and buyers would perform actions that achieve goals that satisfy their needs and wants in on-line buying and selling. Their ultimate goal was usually some combination of customer satisfaction and profitability of their businesses. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of **Walker et al.** and **Lupien et al.** to disclose during a first time period, during which the vendors can submit bids for their vendor pool, performing the following: allowing those of said plurality of buyers, who did not identify all of said plurality of vendors as being acceptable, to identity others of said plurality of vendors as being acceptable, updating the vendor pools accordingly, and transmitting any updates to the vendor pools to their respective vendors; wherein said first time period is divided into predetermined separate time periods during which the bids can be submitted by the vendors; wherein said attempts to match are performed in-between said separate time periods; different ones of said request for quotes identify different ones of said plurality of vendors as being acceptable to supply that buyer; and wherein at least one of said plurality of vendors is identified by more than one of said request for quotes, as disclosed by old and well known art, because this would promote customer satisfaction and profitability.

Claim 33:   **Walker et al.** does not specifically disclose wherein said purchase requests are associated with a trade, wherein each purchase request comprises of a traded product a request quantity of the traded product, and a maximum price at which the buyer is committed to purchase the request quantity of the traded product. However, **Fisher et al.** discloses:
-          wherein said purchase requests are associated with a trade (Abstract),
-          wherein each purchase request comprises of a traded product:
--   a request quantity of the traded product (Abstract; col. 13 line 55 - col. 14 line 11), and
--   a maximum price at which the buyer is committed to purchase the request quantity of the traded product (Abstract; col. 13 line 55 - col. 14 line 11).
Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Walker et al.** to disclose wherein said purchase requests are associated with a trade, wherein each purchase request comprises of a traded product a request quantity of the traded product, and a maximum price at which the buyer is committed to purchase the request quantity of the traded product, as disclosed by **Fisher et al.**, because this promotes more business (i.e., profitability) for the system and is consistent with the invention of **Walker et al.**

Claim 41:   **Walker et al.** discloses:
-          wherein the buyers remain anonymous to the vendors during the trade (col. 7 lines 52-59),
-          wherein the maximum price committed by each buyer is unknown to the vendors during the trade (col. 32 lines 3-15), and
-          wherein a vendor is selected to supply the buyer's purchase request only if the vendor can provide a bid price at or below the buyer's maximum price (col. 32 lines 3-15).

Claim 42:   **Walker et al.** discloses:
-          the request for quotes are not received after an expiration of a first predetermined time (col. 17 lines 48-64), and
-          the bids from the vendors are not received after expiration of a second predetermined time (col. 17 lines 48-64; col. 22 line 40 - col. 23 line 18).

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Continuation of: Boxes I - VIII   **Sheet 14**

4. Claims 19-23, 25-32, 34-38 lack an inventive step under PCT Article 33(3) as being obvious over Walker et al. (U.S. Patent No. 5,794,207), in view of Lupien et al. (U.S. Patent No. 5,845,266).

Claim 19:   Walker et al. discloses each purchase request includes a volume and a maximum price committed by each buyer (col. 8 lines 42-56). Walker et al. does not disclose *said combined quote request does not identify the plurality of buyers but does identify the combined volume of the purchase requests*, nor *a range of prices within which the maximum price committed by each buyer falls*. However, Lupien et al. discloses:
-          said combined quote request does not identify the plurality of buyers but does identify the combined volume of the purchase requests (col. 5 lines 5-24); and
-          a range of prices within which the maximum price committed by each buyer falls (col. 21 line 40 - col. 23 [Table 2]).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify Walker et al. to disclose said combined quote request does not identify the plurality of buyers but does identify the combined volume of the purchase requests, and a range of prices within which the maximum price committed by each buyer falls, as disclosed by Lupien et al., because this limits the maximum price that the buyer would pay.

Claim 20, 23, 34, 37:   Walker et al. discloses:
-          receiving a request for quote from each of a plurality of buyers, each request for quote identifying those of said plurality of vendors acceptable to that buyer irrespective of agreements with others of said buyers; (col. 8 lines 28-65); and
-          aggregating the purchase requests to form a combined quote request (col. 17 line 48 - col. 18 line 33).
Walker et al. does not specifically disclose providing a plurality of buyers with a list containing a plurality of vendors; receiving a request for quote from each of said plurality of buyers, each request for quote identifying those of said plurality of vendors acceptable to that buyer irrespective of agreements with others of said buyers; for each of the plurality of vendors identified in the request for quotes, performing the following: aggregating the one or more request for quotes that identify that vendor as being acceptable, the aggregated request for quote forming a vendor pool representing the aggregate of the potential business from the buyers for that vendor but not the identity of the buyers and transmitting the vendor pool to that vendor such that the buyers remain anonymous; and receiving over time different bids from the vendors to supply the business in their vendor pool. However, Lupien et al. discloses:
-          periodically attempting to match each of the request for quotes to one of the vendors based on the current bids (col. 4 lines 60-65);
-          transmitting said subpools to said respective vendors (col. 4 lines 25-28), as disclosed through the functionality of once the satisfaction density profile is complete, the trader causes the satisfaction density profile to be transmitted to a central matching controller ("CMC"), which anonymously matches buy and sell orders as discussed below;
-          a computerized crossing network that allows traders to input as orders a satisfaction density profile and maximum size limit which at once characterizes the trader's degree of satisfaction to trade at any and all prices and sizes, up to the aggregate (or size) limit, and that matches orders (as represended by each trader's satisfaction density profile) so that each trader is assured that the overall outcome of the process (in terms of average price and size of fill) has maximized the mutual satisfaction of all traders (col. 3 line 62 - col. 4 line 4), which discloses the functionality of a vendor pool.
Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of Walker et al. to disclose periodically attempting to match each of the request for quotes to one of the vendors based on the current bids, transmitting said subpools to said respective vendors, a vendor pool is formed for each vendor from the combined request for quote, and wherein each vendor pool is the aggregate of the quantities in the purchase requests that identify a product supplied by that vendor, as disclosed by Lupien et al., because this promotes increased sales by vendors and purchases by buyers through increased seller and buyer satisfaction.
Neither Walker et al. nor Lupien et al. specifically disclose providing a plurality of buyers with a list containing a plurality of vendors. However, it was old and well known in the art at the time the invention was made that merchants and businesses may have preferences for whom they wish to conduct business with, and a list of acceptable vendors could be supplied by a buyer. A system that accommodates buyer/seller/merchant preferences may be more attractive to buyers as their personal preferences are being catered to and may achieve more sales than ones that don't. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of Walker et al. and Lupien et al. to disclose said providing a plurality of buyers with a list containing a plurality of vendors, as disclosed in old and well known art, because buyers often desire to choose their vendor/supplier because of location, past experience or notoriety.

Claim 21:   Walker et al. does not specifically disclose the vendor pools do not indicate the identity of the plurality of buyers. However, Walker et al. discloses *the present invention effectuates the anonymity of buyers and sellers* (col. 10 lines 1-7). Lupien et al. discloses *Typically, the matching process is anonymous* (Abstract). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify Walker et al. to disclose the vendor pools do

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Continuation of: Boxes I - VIII   Sheet 15

not indicate the identity of the plurality of buyers, as disclosed by **Lupien et al.**, because this maintains the anonymity of buyers.

Claim 22:   **Walker et al.** discloses receiving a bid from each of the one or more vendors in response to the combined quote request (col. 8 lines 28-67; col. 15 lines 45-59; col. 19 lines 13-28).

Claim 25:   **Walker et al.** does not specifically disclose the vendors provide the bids without knowing the maximum price specified by each buyer in the vendor pool. However, **Lupien et al.** discloses the vendors provide the bids without knowing the maximum price specified by each buyer in the vendor pool (col. 11 lines 22-61). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Walker et al.** to disclose the vendors provide the bids without knowing the maximum price specified by each buyer in the vendor pool, as disclosed by **Lupien et al.**, because this provides anonymity for buyers' maximum acceptable prices and provides opportunities for better prices for buyers.

Claim 26:   **Walker et al.** does not specifically disclose the vendor pools received by the vendors indicate a range within which the maximum prices fall. However, **Lupien et al.** discloses the vendor pools received by the vendors indicate a range within which the maximum prices fall (col. 11 line 22 - col. 12 line 25) Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Walker et al.** to disclose the vendor pools received by the vendors indicate a range within which the maximum prices fall, as disclosed by **Lupien et al.**, because this enhances the invention to vendors since it provides some indications of limits on the buyers' bids not otherwise available.

Claim 27:   **Walker et al.** discloses:
-          the request for quotes are not received after an expiration of a first predetermined time (col. 17 lines 48-64), and
-          the bids from the vendors are not received after expiration of a second predetermined time (col. 17 lines 48-64; col. 22 line 40 - col. 23 line 18).

Claim 28:   **Walker et al.** discloses:
-          wherein the vendors can submit new bids within the second predetermined time (col. 22 line 40 - col. 23 line 18), as disclosed through the functionality of counteroffers;
-          wherein the new bids are accepted prior to an expiration of a third predetermined time, the third predetermined time being a subset of the second predetermined time (col. 22 line 40 - col. 23 line 18) as disclosed through the functionality of acceptance of counteroffers by buyers.

Claim 30.   **Walker et al.** discloses
-          receiving from a first of said vendors an indication that a first of said plurality of mutually exclusive states for a first of said set of characteristics is unacceptable (col. 9 lines 45-51); and
-          removing from the vendor pool of the first vendor all of said purchase requests that are associated with said first state of said first characteristic (col. 9 lines 45-51), through the functionality that a seller is given the option to respond to a CPO by issuing a binding counteroffer with conditions different from the original CPO. The seller transmits the counteroffer to the central controller which then forwards the counteroffer to the buyer. The buyer is then given the option of accepting the counteroffer and thereby binding the seller to a contract.

Claim 31:   **Walker et al.** discloses receiving a bid from a first vendor (col. 8 lines 28-65). **Walker et al.** does not specifically disclose wherein a vendor pool is formed for each vendor from the combined request for quote, nor wherein each vendor pool is the aggregate of the quantities in the purchase requests that identify a product supplied by that vendor. However, **Lupien et al.** discloses a computerized crossing network that allows traders to input as orders a satisfaction density profile and maximum size limit which at once characterizes the trader's degree of satisfaction to trade at any and all prices and sizes, up to the aggregate (or size) limit, and that matches orders (as represended by each trader's satisfaction density profile) so that each trader is assured that the overall outcome of the process (in terms of average price and size of fill) has maximized the mutual satisfaction of all traders (col. 3 line 62 - col. 4 line 4), which discloses the functionality of a vendor pool. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Walker et al.** to disclose a vendor pool is formed for each vendor from the combined request for quote, wherein the vendor pool for the first vendor and the vendor pool of a second vendor both include a first and second of said request for quotes; and wherein each vendor pool is the aggregate of the quantities in the purchase requests that identify a product supplied by that vendor, as disclosed by **Lupien et al.**, because this promotes increased sales by vendors and purchases by buyers through increased seller and buyer satisfaction.
          Walker et al. nor **Lupien et al.** discloses associating the first and second of said request for quotes with the first vendor based on the bid received from the first vendor; subsequently receiving a bid from the second vendor; and re-associating the first request for quote but not the second request for quote from the first vendor to the second vendor based

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(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: Boxes I - VIII   Sheet 16

on said bid received from said second vendor. However, it was old and well known in the art at the time the invention was made that bids and quotes may be accepted, organized and/or manipulated in a manner advantageous to buyers and/or sellers. Buyers and sellers may manipulate bids and quotes in a manner that provides profitability to the buyers and sellers. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of Walker et al. and Lupien et al. to disclose the features of associating the first and second of said request for quotes with the first vendor based on the bid received from the first vendor; subsequently receiving a bid from the second vendor; and re-associating the first request for quote but not the second request for quote from the first vendor to the second vendor based on said bid received from said second vendor, as disclosed by old and well known art, because this encourages more aggressive input by buyers and sellers in order to win business opportunities over competitors.

5. Claims 45-70 lack an inventive step under PCT Article 33(3) as being obvious over Walker et al. (U.S. Patent No. 5,794,207), in view of Fisher et al. (U.S. Patent no. 5,835,896), and Lupien et al. U.S. Patent No. 5,845,266, and Brown (U.S. Patent No. 5,794,219).

Claims 45-70:   It was old and well known in the art at the time the invention was made that vendor pools may each include several vendor subpools; each of the vendor subpools being for a different vendor with specific identifying information for that vendor; and wherein different ones of the vendor pools overlap. It was also old and well known in the art that associated with doing business may be lists of appropriate vendors that address the needs/wants of the customers/buyers and particular parameters pertaining to the vendors and their business requirements/capabilities. Means for combining products/services into groups with respect to particular vendors were also old and well known in the art at the time the invention was made. It was also old and well known in the art at the time the invention was made that the willingness of vendors to supply the quantity of business represented by each of the subpools would be indicated by the response of the vendor to the request for quotes in their respective bid. Aspects of these claims are specifically disclosed in the old and well known prior art: e.g., Walker et al., Lupien et al., Fisher et al., and Brown, which together disclose the claimed invention. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of Walker et al., Lupien et al., Fisher et al., and Brown to disclose applicant's invention, as disclosed in old and well known art, because this would encourage customer satisfaction with the buying experience and could enhance vendor profits and business success.

6. Claims 71-89 & 113-126 lack an inventive step under PCT Article 33(3) as being obvious over Walker et al. (U.S. Patent No. 5,794,207), in view of Fisher et al. (U.S. Patent no. 5,835,896), and Lupien et al. U.S. Patent No. 5,845,266, and Brown (U.S. Patent No. 5,794,219).

Claims 71-89:   It was old and well known in the art at the time the invention was made that relevant prior art in combination discloses the aspects of the applicant's invention: receiving a buyer purchase interest from each of a plurality of buyers for a set of one or more different items from a buyer; receiving a preference criteria from the buyer; receiving a first bid from a first vendor and a second bid from a second vendor, the first bid and the second bid associated with the buyer purchase interest, the second bid being better for the buyer than the first bid without regard to the preference criteria; and selecting the first bid instead of the second bid as a winning bid based on the preference criteria. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of Walker et al., Lupien et al., Fisher et al., and Brown to disclose the steps for receiving buyer purchase interests, receiving bids from prospective sellers to satisfy buyers requests, and means to discriminate between bids based on predetermined criteria, as disclosed by prior art, because this would influence the satisfaction of buyers and sellers through the accommodation of their purchase requests and bids, respectively.

Claim 113-126:   It was old and well known in the art at the time the invention was made that relevant prior art in combination discloses the aspects of the applicant's invention: receiving a buyer purchase interest from each of a plurality of buyers for a lot trade, said lot trade involving a plurality of lot items, each of said lot items is associated with a plurality of specific products of the same type or a single specific product, each of said buyer purchase interest identify which of the plurality of lot items that buyer wishes to purchase and a quantity for each of those lot items, the specific products being available from one or more vendors; determining a set of the vendors who each sell products that can fulfill at least one of said buyer purchase interests; for each of the vendors in said set, performing the following, aggregating the one or more buyer purchase interests determined for that vendor, the aggregated buyer purchase interests forming a vendor pool representing the potential business for that vendor, and transmitting the vendor pool to that vendor. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of Walker et al., Lupien et al., Fisher et al., and Brown to disclose the steps for receiving buyer purchase interests for a lot trade, receiving bids from prospective

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Continuation of: Boxes I - VIII   Sheet 17

sellers to satisfy buyers requests, means to discriminate between bids based on predetermined criteria; for each of the vendors in said set, performing the following, aggregating the one or more buyer purchase interests determined for that vendor, the aggregated buyer purchase interests forming a vendor pool representing the potential business for that vendor, and transmitting the vendor pool to that vendor, as disclosed by prior art, because this would influence the satisfaction of buyers and sellers through the efficient accommodation of their purchase requests and bids, respectively.

7. Claims 90-112 lack an inventive step under PCT Article 33(3) as being obvious over Walker et al. (U.S. Patent No. 5,794,207), in view of Fisher et al. (U.S. Patent no. 5,835,896), and Lupien et al. U.S. Patent No. 5,845,266, and Brown (U.S. Patent No. 5,794,219).

Claims 90-112:   It was old and well known in the art at the time the invention was made that relevant prior art in combination discloses the aspects of the applicant's invention: receiving input from each of a first and second buyer that individually identifies a buyer purchase interest from each of the buyers, each of the buyer purchase interests including one or more different items, each of the items representing a specific product or a product type, where the buyer purchase interest from the first buyer and the second buyer indicate the one or more items that the buyer desires to purchase; accepting bids from a first and second vendors, each bid offering to supply one or more different items identified by the buyer purchase interests from the first and the second buyer; and matching the bids from the first and second vendors to the buyer purchase interest from the first and second buyer; wherein a first of the buyer purchase interests is associated with a lot having one or more items. It would have been obvious to one skilled in the art at the time the invention was made to modify the disclosure of Walker et al., Lupien et al., Fisher et al., and Brown to disclose the invention of applicant, as disclosed by old and well known art in combination, because this would encourage customer satisfaction with the buying experience and could enhance vendor profits and business success.

------------------ NEW CITATIONS ------------------
US 5,845,266 A (LUPIEN et al.) 01 December 1998, see Abstract; col. 3, line 60 col. 4, line 65; col. 5, lines 524; col. 11, line 22 col. 12, line 25; col. 21, line 40 col. 23 [Table 2].

US 5,794,219 A (BROWN) 11 August 1998, see Abstract; col. 3, line 44 - col. 8, line 59.
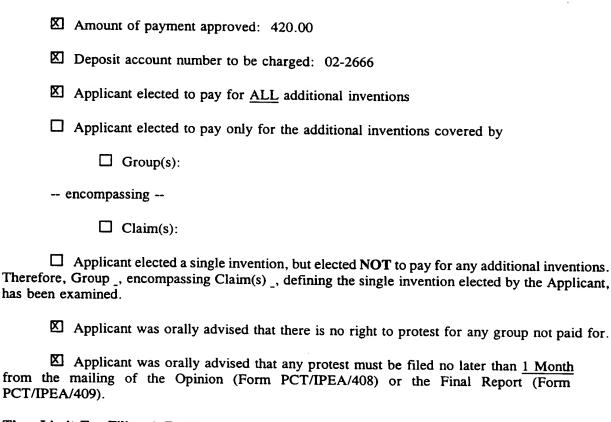
CHAPTER II
PCT TELEPHONE MEMORANDUM
FOR
LACK OF UNITY OF INVENTION

PCT No.: PCT/US00/04814
Examiner: FOREST THOMPSON
Person spoken to: GREGG A. PEACOCK
Date of call: 10 AUGUST 2001

☒ Amount of payment approved: 420.00

☒ Deposit account number to be charged: 02-2666

☒ Applicant elected to pay for <u>ALL</u> additional inventions

☐ Applicant elected to pay only for the additional inventions covered by

    ☐ Group(s):

-- encompassing --

    ☐ Claim(s):

☐ Applicant elected a single invention, but elected **NOT** to pay for any additional inventions. Therefore, Group _, encompassing Claim(s) _, defining the single invention elected by the Applicant, has been examined.

☒ Applicant was orally advised that there is no right to protest for any group not paid for.

☒ Applicant was orally advised that any protest must be filed no later than <u>1 Month</u> from the mailing of the Opinion (Form PCT/IPEA/408) or the Final Report (Form PCT/IPEA/409).

Time Limit For Filing A Protest

Applicant is hereby given <u>1 Month</u> from the mailing date of this Opinion/Final Report in which to file a protest of the holding of lack of unity of invention. In accordance with PCT Rule 68.3, applicant may protest the holding of lack of unity <u>only</u> with respect to the group(s) paid for.

Detailed Reasons For Holding Lack of Unity Of Invention:
(Continued on a separate sheet)

Note: A copy of this form must be attached to the Opinion/Final Report.

USPTO/499 (August 1998) B

ATTACHMENT TO CHAPTER II PCT TELEPHONE MEMORANDUM
FOR
LACK OF UNITY OF INVENTION

Itemized Summary Of Claim Groupings:

This application contains the following inventions or groups of inventions which are not so linked as to form a single inventive concept under PCT Rule 13.1. In order for all inventions to be examined, the appropriate additional examination fees must be paid.

Group 1, claim(s) 1-44, drawn to a method and apparatus for aggregating multiple purchase requests in an open market network.

Group 2, claim(s) 45-70, drawn to a method and apparatus for aggregating vendor sales bids in an open market network.

Group 3, claim(s) 71-89 and 113-126, drawn to a method and apparatus for implementing preferential selection of offers.

Group 4, claim(s) 90-112, drawn to a method and apparatus for implenting pooling of buyers and vendors based on lots.

Detailed Reasons For Holding Lack Of Unity Of Invention:

The species listed above do not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

- Group 1: This invention pertains to a method and apparatus for aggregating multiple buyer purchase requests in an open market network.
- Group 2: This invention pertains to a method and apparatus for aggregating vendor sales bids in an open market network.
- Group 3: This invention pertains to a method and apparatus for implementing preferential selection of vendor offers in an open network.
- Group 4: This invention pertains to a method and apparatus for implementing pooling of buyers and vendors based on lots.